STATE OF IDAHO)
County of KOOTENAI)ss

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AT_____ O'Clock _____M
CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

CHARLES CLOCK and DOROTHY CLOCK, husband and wife,

Plaintiffs,

vs.

DART CLUB MANAGEMENT, LLC, dba PEAK HEATH & WELLNESS CENTER, and BRYAN JANZEN, an individual,

Defendants.

Case No. **CV 2011 9390**

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND DENYING PLAINTIFFS' MOTION FOR I.R.C.P. 56(f) RELIEF

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on defendants' motion for summary judgment and plaintiffs' motion for relief under I.R.C.P. 56(f).

On November 22, 2011, plaintiffs Charles and Dorothy Clock (Clocks) filed their Complaint against Dart Club Management, LLC d.b.a. Peak Health & Wellness Center (Dart) and Bryan Janzen (Janzen). Clocks allege negligence on the part of both Dart and Janzen resulting in injuries Charles Clock sustained from a fall on stairs during an exercise routine. Complaint for Damages, p. 2, ¶ 2.3. On December 29, 2011, Dart and Janzen filed their Answer to Complaint and Demand for Jury Trial. On April 3, 2012, this Court scheduled this matter for a five-day jury trial to begin on December 10, 2012.

On April 2, 2012, Dart and Janzen filed their motion for summary judgment, arguing releases of liability signed by Charles Clock bar the action. Memorandum in

Support of Defendant Dart Club Management, LLC d.b.a. Peak Health & Wellness Center and Bryan Janzen's Motion for Summary Judgment, pp. 5-7. On April 16, 2012, Clocks responded in opposition by filing their Memorandum in Opposition to Defendants' Motion for Summary Judgment, raising the issues that: (1) the releases signed are overbroad; (2) the releases signed are insufficiently specific; (3) the Janzen release violates public policy; and (4) Dart is provided no protection by either the Janzen release or the release signed by Charles Clock twelve years ago relieving Ironwood Athletic Club, Inc., from liability. Memorandum in Opposition, pp. 3-11. In their responsive memorandum, without filing a separate motion, Clocks request Idaho Rule of Civil Procedure 56(f) relief, permitting them additional time to conduct discovery and to amend their Complaint to add a claim for the negligent supervision, training and hiring of Janzen. On April 23, 2012, Dart and Janzen filed their Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment. In that reply memorandum, Dart and Janzen object to Clocks' request for I.R.C.P. 56(f) relief. Also on April 23, 2012, Dart and Janzen filed "Affidavit of Clarification of Gary Retter in Support of Defendants Dart Club Management, LLC dba Peak Health & Wellness Center, and Bryan Janzen's Motion for Summary Judgment." Clocks have not objected to the untimeliness of that affidavit. I.R.C.P. 56(c).

II. STANDARD OF REVIEW.

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court must construe all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in the light most favorable to the non-moving party.

I.R.C.P. 56(c); *Sewell v. Neilson, Monroe Inc.,* 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct. App. 1985). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.,* 134, Idaho 84, 87, 996 P.2d 303, 306 (2002). Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2,* 128 Idaho 714, 718, 918 P.2d 583, 587 (1996).

III. ANALYSIS.

In their motion for summary judgment, Dart and Janzen argue the releases of liability signed by Charles Clock on September 19, 2000, as to Ironwood Athletic Club, Inc., and on May 2, 2011, as to Janzen, waive Clocks' negligence claims. Memorandum in Support of Defendant Dart Club Management, LLC d.b.a. Peak Health & Wellness Center and Bryan Janzen's Motion for Summary Judgment, pp. 2-4. As mentioned above, Clocks make four arguments: (1) the releases signed are unenforceable because they are overbroad; (2) the releases signed are unenforceable because they are not sufficiently specific; (3) the Janzen release is unenforceable because it violates public policy; and (4) Dart is provided no protection by either the Janzen release or the release signed by Charles Clock twelve years ago relieving Ironwood Athletic Club, Inc., from liability. Memorandum in Opposition to Defendants' Motion for Summary Judgment, pp. 3-11.

A. The Releases Signed by Charles Clock Were Not Overbroad Pursuant to Idaho Law.

In their memorandum in opposition to the motion for partial summary judgment, Clocks argue the initial release was signed over twelve years ago "when the Defendant operated under an entirely separate and different legal entity [and should] be entirely

disregarded by this court." Memorandum in Opposition to Defendants' Motion for Summary Judgment, p. 4. Clocks provide no case law to support their argument that a release expires after the passage of any certain amount of time. Clocks also provide no case law in support of their argument that the legal entity has changed. Clocks then argue the 2011 release regarding Janzen training is too vague and overbroad to be enforced. *Id.,* p. 5. In reply, Dart and Janzen argue Charles Clock entered into a "permanent" membership which was never terminated and, therefore, the release signed twelve years ago remains in effect. Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment, p. 4. Dart and Janzen go on to argue that a change in the business operating the facility does not render the release void because the release covered Charles Clock's use of the physical facility, and the physical facility remained the same. *Id.* No authority is cited by Dart or Janzen in support of the claim that an entity's name change has no effect on contracts entered into by the entity.

Dart and Janzen cite to the recent Idaho Supreme Court decision in *Morrison v. Northwest Nazarene University,* 273 P.3d 1253, 2012 WL 987516 (March 22, 2012), to establish that exculpatory clauses do not need to identify the specific, allegedly negligent conduct at issue. Dart and Janzen argue, "The Facility Release covers all claims arising out of Charles Clock's use of the Facility and specifically indicates it covered negligence" and "[t]he Janzen release is limited to Charles Clock's injuries arising from his 'use of the facilities and [his] participation in the program' as well as 'any injury resulting from the equipment.'" *Id.,* p. 6.

Clocks claim "…the 2000 release implicates use of equipment, facilities, and classes." Memorandum in Opposition to Defendants' Motion for Summary Judgment,

p. 6. Clocks continue: "It was none of these things that caused Plaintiff's injuries. *Id.* Finally, Clocks claim: "Simply put, the language wholly fails to put signers on sufficient notice that while under the direct supervision and oversight of a trainer one is not safe, that risks are still present, and that neither the trainer nor the facility will be responsible for the same." *Id.,* p. 7. The "Ironwood Athletic Club Application for Membership (Permanent)", signed by Charles Clock on September 19, 2000, states Clock recognizes "the use of equipment, facilities and classes offered by Ironwood Athletic Club, Inc., involves risk of physical injury including that caused by the negligence of himself or Ironwood Athletic Club, Inc., its agents and employees." Affidavit of Gary Retter, filed April 2, 2012, Exhibit A, p. 2. The release goes on to state Clock voluntarily releases discharges, waives and relinquishes all causes of action for personal injury arising out of his use of the facilities, that Clock agrees to indemnify and hold harmless Ironwood Athletic Club, Inc., and that his intention is to exempt Ironwood Athletic Club, Inc., its agents and employees, from liability for personal injury, property damage or wrongful death caused by its negligence. *Id.* The release specifically covers negligence caused by Ironwood Athletic Club, Inc., its agents and employees, arising out of the use of the facilities. The release is not limited to use of equipment. The injury to Clock clearly occurred as a result of Clock's use of the facilities, and under the allegedly negligent direction of Janzen, an employee of the facility. As to the 2000 release, it does "speak clearly and directly to the particular conduct of the defendant which caused the harm at issue." *Anderson & Nafziger v. G.T. Newcomb, Inc.,* 100 Idaho 175, 178, 595 P.2d 709, 712 (1979). The 2011 release signed by Clock concerns "training", and states Clock "…agree[s] that your Trainer [Janzen] will not be liable for any injury." Affidavit of Bryan Janzen, filed April 2, 2012, Exhibit 1. Clocks correctly note the 2011 release as to Janzen does not mention the word "negligence."

Memorandum in Opposition, pp. 5-6. While that release is not as specific as to the type of conduct (negligence) specified in the 2000 release, the 2000 release still governs. By its own terms, the 2000 release is "permanent".

There is no support for Clocks' contention that a twelve-year-old agreement releasing liability is somehow too far removed in time to have effect. The release is part of Charles Clock's "Application for Membership (Permanent)." Affidavit of Gary Retter, filed April 2, 2012, Exhibit A, p. 1. Nothing about that application indicates that membership is anything less than "permanent", and the release does not indicate that it is in effect for any period of time less than "permanent". The Clocks cite no such authority for their proposition, and this Court could find no authority for their position.

Likewise, there is no support for Clocks' claim that the change in entity obviates the releases. The Affidavit of Gary Retter sets forth that Ironwood Athletic Club, Inc. has owned and operated a health club business throughout the timeframe involved here. Affidavit of Clarification of Gary Retter in Support of Motion for Summary Judgment filed April 23, 2012, pp. 1-2, ¶¶ 2, 6. Charles Clock signed his release on September 19, 2000, when he applied for membership with Ironwood Athletic Club. *Id.* The application for membership signed by Charles Clock lists the entity as "Ironwood Athletic Club", no "Inc." Affidavit of Gary Retter, filed April 2, 2012, Exhibit A, p. 1. No party has attached any significance to this fact. What is relevant is the "Release of Liability" attached to that application for membership specifically releases "Ironwood Athletic Club, Inc., its agents and employees". *Id.,* p. 2. Retter makes it clear that as of September 19, 2000, Ironwood Athletic Club, Inc., *owned* the building that housed the health club at 940 Ironwood Drive, and it also *operated* the health club under the name Ironwood Athletic Club, Inc. Affidavit of Clarification of Gary Retter in Support of Motion for Summary Judgment filed April 23, 2012, pp. 1-2, ¶¶ 2, 6. On December 21, 2006,

Dart Club Management, LLC (Dart) was formed and took over the *operation* of the health club under the business name Ironwood Athletic Club. *Id.,* at ¶ 3. On October 20, 2008, Dart thereafter filed a Certificate of Assumed Business Name with the Idaho Secretary of State, ceasing operations under Ironwood Athletic Club and began operating under the business name Peak Health and Wellness Center. *Id.,* at ¶¶ 4-5. Again, at all times, the building was owned by Ironwood Athletic Club, Inc. *Id.,* at ¶ 6. A treatise on the effect of a name change reads in relevant part:

> The change of a corporation's name is not a change of its identity and has no effect on the corporation's property, rights, or liabilities, although it may have the effect of including additional averments in pleading in particular cases for the purpose of showing the identity of the corporation.

18 C.J.S. *Corporations* § 140 (2012). Thus, the name change from the entity *operating* the health club from Ironwood Athletic Club, Inc., to Dart dba Ironwood Athletic Club, to Dart dba Peak Health and Wellness Center, is of no import.

However, Dart did not come into existence until December 21, 2006. Affidavit of Clarification of Gary Retter in Support of Motion for Summary Judgment filed April 23, 2012, p. 2, ¶ 3. And, Ironwood Athletic Club, Inc.'s release of liability applies only to itself, its agents, and its employees. Affidavit of Gary Retter, filed April 2, 2012, Exhibit A, p. 1. There is no mention of *assigns* in the Release. It follows that the release signed in 2000 by Charles Clock, releasing Ironwood Athletic Club, Inc., cannot have been intended by the parties to apply to Dart, which was not created until 2006. "The general rule would seem to be that where a contract is assignable the assignee acquires all the rights of the assignor and takes the contract subject to all of the obligations of the assignor therein stipulated." *Van Berkem v. Mountain Home Development Co.,* 132 Idaho 639, 641, 977 P.2d 901, 903 (Ct.App. 1999). There is simply nothing before the Court at this time to indicate that Dart is an *assignee*.

But Dart only *operates* the facility *owned* by Ironwood Athletic, Inc. The question for the Court then is whether Dart is an *agent* of Ironwood Athletic Club, Inc. The RESTATEMENT (THIRD) OF AGENCY, § 1.01 (2011) defines agency as:

> [T]he fiduciary relationship that arises when one person (a "principal") manifests assent to another person (an "agent") that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to so act.

Retter states Dart was formed December 21, 2006, and took over operation of the health club business with the initial name of Ironwood Athletic Club. Affidavit of Clarification of Gary Retter in Support of Defendants' Motion for Summary Judgment filed April 23, 2012, p. 2, ¶ 3. An agency relationship contemplates three parties: (1) the principal, (2) the agent, and (3) the third party the agent deals with. RESTATEMENT (THIRD) OF AGENCY, § 1.01, cmt. c. In *Vreeken v. Lockwood Engineering, B.V.,* 148 Idaho 89, 107, 218 p.3d 1150, 1168 (2009), the Idaho Supreme Court found an agency relationship existed for the purpose of admitting statements by an agent of a party where deposition testimony stated an individual helped the plaintiff manage a business, "thereby acting as his agent in the day-to-day function of the company." *Id.* The evidence before the Court indicates the same facts are present here. Even in the light most favorable to Clocks, it cannot be said that Dart does not manage the day-to-day business of the health club. Dart is an agent of Ironwood Athletic Club, Inc. And, as an agent of Ironwood Athletic Club, Inc., Dart was specifically *included* in the 2000 release signed by Charles Clock.

Dart and Janzen are correct in arguing *Morrison* does not require specific conduct to be listed in a release. Reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment, p. 5. The Idaho Supreme Court held:

> The agreement is likewise not inapplicable because of its failure to mention the specific conduct that is alleged to have constituted negligence in this case. In *Anderson & Nafziger v. G.T. Newcomb, Inc.,* 100 Idaho 175, 178, 595 P.2d 709, 712 (1979), this Court stated, "Clauses which exclude liability must speak clearly and directly to the particular conduct of the defendant which caused the harm at issue." That language can be misinterpreted, because neither that case nor the cases it cited nor our subsequent cases have held that an exculpatory clause must list the specific, allegedly negligent conduct at issue.

273 P.3d 1253, 1256, Slip Opinion p. 3. In discussing cases from other jurisdictions decided prior to *Anderson & Nafziger*, followed by a discussion of all Idaho cases on the issue, the Idaho Supreme Court in *Morrison* stated "none have held that an exculpatory clause was ineffective because the specific conduct that gave rise to the cause of action was not listed." *Morrison,* 273 P.3d 1253, 1256-59, Slip Opinion pp. 4-6. Both the Janzen release of 2011 and the Ironwood Athletic Club, Inc., release of 2000 specifically state defendants are exempt from liability for injuries caused by the use of the facilities. No questions of fact remain in this regard and Idaho law clearly does not require the specificity which Clocks argue is necessary.

B. The Janzen Release is Not Void for Being Against Public Policy.

In *Morrison*, The Idaho Supreme Court held:

> "Freedom of contract is a fundamental concept underlying the law of contracts and is an essential element of the free enterprise system." *Rawlings v. Layne & Bowler Pump Co.,* 93 Idaho 496, 499, 465 P.2d 107, 110 (1970). Agreements exempting a party from liability for negligence will be upheld unless the party owes to the other party a public duty created by statute or the other party is at an obvious disadvantage in bargaining power. *Lee v. Sun Valley Co.,* 107 Idaho 976, 978, 695 P.2d 361, 363 (1984).

273 P.3d 1253, 1254, Slip Opinion p. 4. Clocks have not claimed a disadvantage in bargaining power. Indeed, under *Morrison*, such claim would be without merit. In the present case, no one was forcing Charles Clock to join the athletic club in 2000, and no one was forcing Charles Clock to see Janzen specifically in 2011. In *Morrison*,

Morrison's employer required Morrison to attend a team building exercise at Northwest Nazarane, and required him to sign a release prior to attending. The Idaho Supreme Court dealt with that issue as follows:

> In this case, Morrison stated in his affidavit: "My said employer told us before we went to the team building exercises that I needed to sign the release in order to participate. All employees were expected to participate and I signed it." He also stated that he was not given the option of refusing to sign the release and it was required by his employer. Morrison was not injured by signing the release. He was injured by falling from the climbing wall. Absent from his affidavit is any statement that he told his employer that he did not want to climb the climbing wall and that his employer ordered him to do so anyway.

273 P.3d 1253, 1255, Slip Opinion p. 5. Clocks have claimed a breach of a public duty created by statute. Clocks claim "…athletic trainers are not to act negligently, incompetently, or unprofessionally in the practice of athletic training. I.C. § 54-3911(1)(b)." Memorandum in Opposition, p. 8. Clocks claim, "…Janzen was held out to the general public as a 'trainer,' referred to as both a fitness trainer and as a certified professional trainer." *Id.* Clocks' counsel provided an Affidavit of Counsel which attaches a page from the Peak Fitness website. Affidavit of Counsel filed April 16, 2012, Exhibit A. On that webpage, under the heading "Meet Our Trainers", Janzen is listed as a "Fitness Professional." *Id.* It continues that Janzen "Majored in Nutritional Science", is a National Academy of Sports Medicine Certified Trainer" and has "12 Years of Group & Personal Training Experience." *Id.* Clocks then argue, "According to section 54-3904 of the Idaho Code, any person who practices as or represents himself or herself as a trainer must be licensed pursuant to the provision of that chapter and submit to appropriate oversight." Memorandum in Opposition, p. 8. However, as pointed out by Dart and Janzen, there is a difference between an "athletic trainer" on one hand, and a "fitness professional"/"personal trainer" on the other hand. Reply to

Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment, p. 8.

Clocks' contend Janzen, as an athletic trainer, is subject to a public duty pursuant to Idaho Code § 54-3911(1)(b). Memorandum in Opposition, p. 8. Clocks write:

> Defendant Janzen was held out to the general public as a "trainer," referred to both as a fitness trainer and as a certified professional trainer. According to section 54-3904 of the Idaho Code, any person who practices as or represents himself or herself as a trainer must be licensed pursuant to the provisions of that chapter and submit to appropriate oversight.

Id. That simply is not what I.C. § 54-3904 says. Idaho Code § 54-3904 does not equate "trainer" with "athletic trainer". Idaho Code § 54-3904 reads in its entirety:

> **54-3904. Licensure required.** It shall be unlawful for any person to practice or to offer to practice as an athletic trainer, or to represent such person to be an athletic trainer unless such person is licensed under the provisions of this chapter. Only an individual may be licensed under this chapter. An individual may not use the title "licensed athletic trainer," "athletic trainer," or "athletic training," the abbreviations "AT," "ATC," "AT,C," "ATC/L," "CAT," "LAT," or any other words, abbreviations or insignia to indicate or imply that the individual is an athletic trainer unless the individual is licensed pursuant to this chapter.

Idaho Code § 54-3904 does not ever mention the concept of a "trainer." Clocks make the claim that "Given that Defendants provided Plaintiff with rehabilitation and reconditioning services at a recreational sports club, services which fall within the gambit of 'athletic training' per I.C. § 54-3902(1) and (4)(d), public policy protection should be extended to void the attempted releases of liability proffered in this case." Memorandum in Opposition, p. 9. What is completely ignored by Clocks is the fact that such cited statute applies only to a "licensed athletic trainer." I.C. § 54-3902(4). Dart and Janzen are correct in their reply that Janzen was not an athletic trainer and did not hold himself out as such. Reply to Plaintiffs' Memorandum in Opposition to

Defendants' Motion for Summary Judgment, pp. 8-9. Clocks have submitted no facts which would show Janzen was in fact an "athletic trainer", or even held himself out as such, so as to fall under the statutory duties imposed on an "athletic trainer". At oral argument, counsel for Clocks appeared to recognize that they had no such facts, because counsel for Clocks argued: "We are not arguing he's an athletic trainer, we're arguing the same policy should apply." But that argument begs the question: "How can a statutory duty apply to Janzen when he does not meet the definition of an 'athletic trainer' under the statute?" There is no legal doctrine that indicates that it is proper for a Court to expand a statutorily imposed duty on to other areas not specified by the statute.

Clocks are correct in setting forth that a release may not be given effect when a public duty is involved. In *Rawlins v. Layne & Bowler Pump, Co.,* 93 Idaho 496, 499-500, 465 P.2d 107, 110-11 (1970), the Idaho Supreme Court held that the general rule allowing express agreement to exempt one of the parties from negligence is subject to two exceptions: (1) where one party is at an obvious disadvantage in bargaining power (discussed above), and (2) where a public duty is involved, such as cases involving public utilities or common carriers. Foreign jurisdictions have addressed the question of public policy challenges to recreational releases directly. An exculpatory agreement in a recreational sports context is unenforceable as a matter of public policy where it purports to release liability for future gross negligence (while future liability for ordinary or simple negligence generally may be released). *Eriksson v. Nunnink,* 191 Cal.App.4th 826, 855, 120 Cal. Rptr. 3d 90, 114 (Cal.App.4th Dist., 2011). But, generally, exculpatory agreements in recreational sports contexts do not involve the public interest and are therefore not void as against public policy. *Huverserian v. Catalina Scuba Luv, Inc.,* 184 Cal.App.4th 1462, 110 Cal.Rptr.3d 112 (Cal.App. 2d Dist., 2010). In a health

club context, it is not contrary to the public interest to enforce a fitness center's agreement limiting its liability for injuries sustained as a result of negligence resulting from a patron's voluntary use of equipment or voluntary participation in instructed activity. *Stelluti v. Casapenn Enterprises, LLC.,* 203 N.J. 286, 1 A.3d 678 (N.J., 2010). Clocks make no argument that Janzen's negligence rose to the level of gross negligence and no evidence indicates Janzen ever held himself out as an athletic trainer or that Clock suffered from an "athletic injury" as contemplated in I.C. § 54-3902(4)(d), cited by Clocks. Dart and Janzen are entitled to judgment as a matter of law on the question of whether the Janzen release is void for violating public policy. The Court finds as a matter of fact and law that the Janzen release in no way violates public policy.

C. Clocks are Not Entitled to any I.R.C.P. 56(f) Relief Sought.

In Clocks' responsive memorandum, without filing a separate motion, Clocks request Idaho Rule of Civil Procedure 56(f) relief, permitting them additional time to conduct discovery and to amend their Complaint to add a claim for the negligent supervision, training and hiring of Janzen. Memorandum in Opposition to Defendants' Motion for Summary Judgment, pp. 11-12. No separate motion was filed, in violation of I.R.C.P. 7(b)(1). Additionally, Clocks have failed to file any Notice of Hearing on this issue, in contravention of I.R.C.P. 7(b)(3)(A). Accordingly, the Court may, in its discretion, deny any such motion without oral argument and without notice. I.R.C.P. 7(b)(3)(D). The Court declines to do so in this case, but any such motion must be decided against Clocks because of other procedural deficiencies. Idaho Rule of Civil Procedure 56(f) states in its entirety:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for

> judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other as is just.

Dart and Janzen argue relief under I.R.C. P. 56(f) is simply inapplicable here. As argued by Dart and Janzen, Clocks have not submitted affidavits, thus, Clocks have not presented this Court with any *facts* they identify as essential for them to oppose the instant motion for summary judgment. Nor is there any support for the argument that Clocks be permitted to conduct additional discovery to establish a claim for the negligent supervision and training of Janzen by Dart, or that such a claim is not barred by the releases as discussed *supra*. Due to Clocks' failure to comply with the requirements of I.R.C.P. 56(f), any request for relief under that rule must be denied.

At oral argument on April 30, 2012, counsel for Clocks stated that they were not withdrawing their claim for relief under I.R.C.P. 56(f) because if the Court were to find the Janzen release enforceable, but the facility release unenforceable, the Clocks would be making a claim against Dart for negligent supervision. In addition to denying any claim under I.R.C.P. 56(f), the Court has determined that both releases are enforceable. Thus, no claim for negligent supervision exists.

IV. CONCLUSION AND ORDER.

For the reasons stated above, Dart Club Management, LLC dba Peak Health & Wellness Center, and Bryan Janzen, are entitled to summary judgment against plaintiffs Clocks. Accordingly, Clocks' claims against defendants must be dismissed. Additionally, any motion by Clocks for relief under I.R.C.P. 56(f) must be denied.

IT IS HEREBY ORDERED summary judgment is GRANTED in favor of defendant Dart Club Management, LLC dba Peak Health & Wellness Center, and defendant Bryan Janzen, against all claims of plaintiffs Clocks.

IT IS FURTHER ORDERED Clocks' claims against defendants are DISMISSED.

IT IS FURTHER ORDERED any motion by Clocks for relief under I.R.C.P. 56(f) is DENIED.

IT IS FURTHER ORDERED counsel for defendants shall prepare an appropriate judgment.

IT IS FURTHER ORDERED the jury trial scheduled for December 10, 2012, is VACATED.

Entered this 23rd day of May, 2012.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of May, 2012, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
R. Bruce Owens, Regina M. McCrea	208 667-1939	Jeffrey A. Thomson, Matthew C.Parks	208 384-5844

_____
Jeanne Clausen, Deputy Clerk